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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,499	08/22/2003	Daniel S. Choi	217 P 927	9670

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EXAMINER

PUROL, DAVID M

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 04/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/646,499	Applicant(s) CHOI ET AL.	
	Examiner David M Purol	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. The proposed drawing correction filed on December 13, 2004 has been approved.
2. Claims 1-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not known if the applicant is claiming the shelf per se or in combination with the barbecue grill. While claim 1, line 1 recites "A shelf for a barbecue grill" and thereby sets forth that the claims are drawn to the shelf per se, lines 6-9 state that the detent of the first quick release member secures the shelf to the barbecue grill frame assembly in a first position and the first quick release member adjusts to a second position to allow for detachment of the shelf from the barbecue grill frame assembly which can only be an accurate recitation if the barbecue grill is a positively claimed element of the invention. Similarly for claim 2 which sets forth that the detent of the second quick release member secures the shelf to the barbecue grill frame assembly. Claim 5 states that the detent engages a bottom wall portion of the barbecue grill frame assembly in the first position which can only be an accurate recitation if the barbecue grill is a positively claimed element of the invention. Claim 8 defines structure of the barbecue grill frame assembly further implying that the claims are drawn to the combination of the shelf with the barbecue grill. Similarly for claims 10 and 11 which state that the spring members secures the shelf to the barbecue grill frame assembly. Claim 12 recites the sidewalls as engaging the cross members of the barbecue grill frame assembly, claim

13 states that the transverse portion of the sidewalls of the shelf are positioned on an upper portion of the cross members of the barbecue grill frame assembly, claim 15 states that the shelf is cooperatively dimensioned with the interior space such that the shelf is positioned within the interior space, claim 16 states that the spring member is cooperatively dimensioned such that the spring member is removably received by the barbecue grill frame assembly, claim 17 states that the downturned portion engages the cross member of the barbecue grill frame assembly, each of which can only be an accurate recitation if the barbecue grill is a positively claimed element of the invention. Likewise, claims 18-26 suffer from the above noted defects. Elements of an invention to which it is necessary to refer in order to define other elements of the invention are to be positively included in the claims.

Claim 7 is further indefinite for it recites that the shelf is a wire rack, wherein, the claims from which claim 7 depends upon are not generic claims inasmuch as they are drawn to the embodiment of the shelf comprising a piece of sheet material.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3,5,6,8,9,18,19,21,25,26 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Lin '322. Lin '322 discloses a shelf 1 having a circular sidewall 11 depending from a bottom wall, quick release member 12 having hole portions

121,122,123 defining therebetween a detent. The circular sidewall 11 defines the claimed first, second, third, fourth sidewalls. Inasmuch as the claims are drawn to the shelf per se, no patentable weight has been attributed to the barbecue grill.

4. Claims 1,3-5,8-10,12-26 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Welch et al. Welch et al disclose a shelf 10 having a surface 14 which responds to the claimed bottom wall, sidewalls 12,16,18, quick release members 30 formed of a spring member. Inasmuch as the claims are drawn to the shelf per se, no patentable weight has been attributed to the barbecue grill.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:


(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2,6,11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Welch et al. As to the number of sidewalls and quick release members employed, to have provided the shelf of Welch et al with additional sidewalls and quick release members for their explicit purpose of supporting the shelf is nothing more than a duplication of existing elements and as such does not constitute a patentable distinction.

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6. The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Darbyshire, Heft, DiCenzo.

7. Any inquiry concerning this communication should be directed to David M Purol at telephone number (571) 272-6833.


David M Purol
Primary Examiner
Art Unit 3634

DMP
(571) 272-6833
April 15, 2005